

AR0520

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In The Matter of)
MOTOROLA INC. GOVERNMENT) ADMINISTRATIVE ORDER
ELECTRONICS GROUP (GEG)) ON
Respondent) CONSENT
DOCKET NO: 84-01
PROCEEDINGS UNDER SECTION 3013)
OF THE RESOURCE CONSERVATION)
AND RECOVERY ACT)

Introduction

This Administrative Order on Consent ("Consent Order") is entered into voluntarily by and between Motorola Inc. Government Electronics Group ("Motorola") and the United States Environmental Protection Agency ("EPA") pursuant to the authority vested in the Administrator of EPA by Section 3013 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6934, and redelegated to the Director, Toxics and Waste Management Division, EPA, Region 9. The Consent Order concerns the performance by Motorola of a

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1 portion of the Remedial Investigation and Feasibility Study
2 ("RI/FS") for the Indian Bend Wash site in Scottsdale and Tempe,
3 Arizona.

4 Motorola has entered into this Consent Order solely in order
5 to facilitate an investigation of groundwater conditions in the
6 Indian Bend Wash site. Nothing in the Consent Order is intended
7 to or should be construed as an admission of any issue of law or
8 fact by Motorola.

9 Notice of this Consent Order has been given to the Arizona
10 Department of Health Services ("ADHS") and the Arizona Department
11 of Water Resources ("ADWR").

12 Background

13 1. The Indian Bend Wash site encompasses approximately 12
14 square miles in parts of Scottsdale and Tempe, Arizona. The
15 Indian Bend Wash area is bounded by the following streets:
16 Chaparral Road to the north, Pima Road to the east, Apache
17 Boulevard to the south, and Scottsdale Road to the west. Beneath
18 the Indian Bend Wash site is the Salt River Ground Water Basin,
19 which is the primary source of drinking water for more than
20 350,000 people.

21 2. Between 1957 and the present, Motorola has been the
22 owner and operator of a facility (the "facility") located at 8201
23 East McDowell Road, Scottsdale, Arizona. The facility is located
24 within the Indian Bend Wash area as defined in Paragraph 1 above.

25 3. Motorola produces electronic devices, subassemblies and
26 systems, and uses or has used various organic solvents in its
27 manufacturing processes including trichloroethylene (TCE),
28 trichloroethane (TCA), tetrachloroethylene (PCE), and toluene.

1 Motorola alleges that it ceased all uses of TCE between 1974 and
2 1975, with the exception of small quantities used as a heat
3 exchange medium.

4 4. In October 1981, the City of Phoenix discovered
5 concentrations of TCE in two of its municipal drinking water
6 wells located in the Indian Bend Wash site which exceeded the
7 action level of 5.0 ppb established by the State of Arizona for
8 drinking water. As a result of these findings, several municipal
9 wells in the Indian Bend Wash site have been closed, converted to
10 irrigation wells, or the water from the wells has been blended.
11 Subsequent sampling by EPA, state and local agencies detected
12 concentrations of TCE and other organic chemicals in other
13 municipal wells used for drinking water and irrigation purposes.
14 The concentrations of TCE in municipal wells have ranged from
15 nondetectable to as high as approximately 1,000 ppb. The con-
16 centrations of TCE in some wells have declined since 1981, while
17 concentrations in other wells have increased.

18 5. In order to assess the extent of organic chemical con-
19 centrations in groundwater in the Indian Bend Wash site, EPA in
20 cooperation with ADHS, ADWR, and local governments developed a
21 detailed Workplan for a Remedial Investigation and Feasibility
22 Study for the Indian Bend Wash site ("RI/FS Workplan"). A copy
23 of the RI/FS Workplan is attached to and hereby made a part of
24 this Consent Order as Appendix A.

25 6. The Remedial Investigation portion of the RI/FS Workplan
26 is divided into two separate phases. Phase I of the Remedial
27 Investigation provides for the installation of approximately 20
28 monitoring wells. The approximate location and depth of these

1 monitoring wells is specified in Appendix A. Approximately 20
2 additional monitoring wells will be installed during Phase II of
3 the Remedial Investigation. The location and depth of the Phase
4 II monitoring wells have not been determined as of the effective
5 date of this Consent Order. Motorola and EPA shall enter into
6 subsequent negotiations regarding the extent of participation by
7 Motorola in Phase II of the RI/FS.

8 7. Prior to the development of the RI/FS Workplan, Motorola
9 installed sixteen monitoring wells at its Government Electronics
10 Group ("GEG") facility during 1983 and 1984. The installation of
11 these monitoring wells was discussed with and approved in advance
12 by EPA and ADHS. The soil and groundwater monitoring data obtained
13 by Motorola from these monitoring wells was provided to EPA,
14 ADHS, and ADWR and has been used by EPA in the development of the
15 RI/FS Workplan. The data from these sixteen wells will be used
16 by EPA and other governmental agencies in understanding ground-
17 water quality and hydrogeologic conditions in the Indian Bend
18 Wash site.

19 Jurisdiction

20 8. The Consent Order is entered into pursuant to Section
21 3013 of RCRA, 42 U.S.C. §6934, and is consistent with the provisions
22 of the National Contingency Plan.

23 9. Section 3013 of RCRA vests authority in the Administrator
24 of EPA to require certain persons in specified circumstances to
25 conduct monitoring, testing, analysis, and reporting of water and
26 soil conditions. This authority has been redelegated to the
27 Director, Toxics and Waste Management Division (EPA, Region 9).

28 10. For purposes of this Consent Order only, Motorola

1 agrees not to contest the issue of jurisdiction in any action
2 brought by EPA to enforce the Consent Order.

3 Stipulations

4 11. Motorola agrees to install ten off-site groundwater
5 monitoring wells in the Indian Bend Wash site as part of Phase I
6 of the RI/FS. The remaining ten Phase I RI/FS wells shall be
7 installed by EPA, its contractors or other potentially responsible
8 parties in accordance with the RI/FS Workplan. The particular
9 locations and depths of the ten Motorola off-site monitoring
10 wells are set forth in the revised Motorola Proposal for Off-Site
11 Monitoring Wells ("Motorola Proposal") prepared by Dr. Errol
12 Montgomery & Associates ("Montgomery Associates") dated November 19,
13 1984. A copy of the revised Motorola Proposal is attached to and
14 hereby made a part of this Consent Order as Appendix B.

15 12. All monitoring wells installed by Motorola pursuant to
16 this Consent Order shall be installed, sampled and tested in
17 accordance with the Quality Assurance Project Plan ("QAPP")
18 developed by EPA. A copy of the QAPP is attached to and hereby
19 made a part of this Stipulation and Agreement as Appendix C.

20 13. Motorola shall complete installation of the ten Motorola
21 Phase I RI/FS wells within 120 days of the effective date of this
22 Consent Order. Motorola shall submit a final report setting
23 forth the detailed sampling data from the ten Phase I RI/FS
24 monitoring wells within 90 days of the completion of construction
25 of the tenth well.

26 14. The exact location and depth of the ten Motorola Phase
27 I RI/FS wells may be modified based upon the results of data
28 developed from other monitoring wells as part of the Phase I

1 RI/FS upon the written concurrence of EPA and Motorola.

2 15. Delay in the installation of the ten Motorola Phase I
3 RI/FS monitoring wells shall not be considered a violation of
4 this Consent Order to the extent that the delay is caused by an
5 act of God or circumstances beyond the reasonable control of
6 Motorola or its contractor. Motorola shall notify EPA in the
7 event that circumstances occur which may result in a delay, and
8 notify EPA of the expected duration of such delay. Motorola
9 shall use its best efforts to minimize any delay that might
10 result from such circumstances.

11 16. Samples relating to the ten Phase I RI/FS monitoring wells
12 installed by Motorola will be taken by Motorola or its authorized
13 representatives. Motorola shall make available to EPA, upon
14 request, a split sample of all samples taken by Motorola or its
15 authorized representatives from the ten Motorola Phase I RI/FS
16 monitoring wells. Motorola or its contractors may have the right
17 to request and receive split samples from any monitoring well
18 drilled by EPA and its contractors as part of Phase I or Phase II
19 of the RI/FS. The identification and maintenance of all split
20 samples shall be in accordance with the QAPP set forth as
21 Appendix C.

22 17. It is the responsibility of Motorola to obtain the
23 access to and use of any off-site sites used for Motorola's Phase
24 I monitoring wells. Motorola assumes full responsibility for any
25 claims arising from the activities conducted solely by Motorola
26 or its representatives or consultants on third-party property in
27 connection with this Consent Order. Motorola will use its best
28 efforts to provide access to the drilling sites for EPA employees,

1 contractors or consultants at all reasonable times and will
2 permit such persons to be present and move freely in the areas
3 where any work is being conducted pursuant to this Consent Order.

4 18. Motorola shall provide EPA with copies of all charts,
5 maps, letters, memoranda, invoices, shipping manifests, raw and
6 quality assured data, and other records and documents developed
7 by Motorola and its consultants in implementing this Consent Order
8 as requested by EPA, or which are required by RCRA, or any other
9 applicable law, to be provided to EPA. Each party shall provide
10 water quality data to the other party within 60 days of the date
11 of sample collection by the party, its agents or its contractors.
12 Each party shall provide data from geophysical logs, lithologic
13 logs, water levels, aquifer tests, and well construction to the
14 other party within 14 days of collection of the data. EPA agrees
15 that by virtue of Motorola's disclosure of documents as required
16 under this paragraph, Motorola has not waived its right to assert
17 whatever privileges it may have with respect to other reports,
18 documents, or data.

19 19. All data, unless exempted, shall be reported in a format
20 to be designated in writing by EPA. Until EPA provides such
21 written notification, all data shall be submitted in a format
22 similar or identical to that format in which previous Motorola
23 data has been submitted to EPA.

24 20. Motorola's performance under this Consent Order is con-
25 tingent upon the issuance of the necessary permits, licenses, and
26 approvals by EPA, ADHS, and ADWR to Motorola and its contractors
27 to install off-site monitoring wells. EPA shall use its best efforts
28 to expedite issuance of all permits, licenses, and approvals

1 necessary to implement the monitoring work. A delay in the
2 issuance of any such license or permit shall result in an
3 extension of the deadlines set forth in Paragraph 13 above.

4 21. EPA or Motorola may propose a change in the conditions
5 of the Consent Order. In the event that such a change is proposed
6 by any party or in the event that there has been timely notice of
7 failure to meet a filing or performance deadline, there shall be
8 an opportunity for a meeting of the parties. There shall also be
9 an opportunity for submission of written materials prior to, and
10 at, such meeting for the purpose of considering any proposed
11 change and adopting any necessary amendment to the Consent Order.
12 Any amendment to the Consent Order shall be in writing and approved
13 by all parties. If agreement cannot be reached, then the parties
14 to the Consent Order may seek judicial or administrative review
15 of the dispute.

16 22. If, in the course of performance of the action required
17 by the Consent Order, EPA believes that Motorola has failed to
18 comply materially with any of the provisions of this Consent
19 Order, EPA shall submit to Motorola a written notice of its
20 determination of noncompliance, which notice shall include a
21 description of the actions needed to remedy the noncompliance.
22 Upon receipt of written notice of noncompliance, Motorola shall
23 then have an opportunity to confer with EPA within 7 days in
24 accordance with the procedure established in Paragraph 21 above,
25 regarding the alleged instance of noncompliance and to cure any
26 alleged instance of noncompliance. In the event EPA fails to
27 notify Motorola of alleged instances of noncompliance by the EPA
28 review of Motorola's Final Phase I report, there shall be a

1 presumption that the work was performed by Motorola in accordance
2 with this Consent Order.

3 23. All written communications and submittals between EPA
4 and Motorola shall be sent to the following addressees:

5 EPA:

6 Harry Seraydarian
7 Director, Toxics & Waste Management Division
8 EPA, Region IX
215 Fremont St.
San Francisco, CA 94105

9 Motorola:

10 Robert F. Kline
11 Director, Support Operations Staff
12 Government Electronics Group
Motorola, Inc.
13 P.O. Box 1417
Scottsdale, AZ 85252

14 24. Neither the United States Government nor any agency
15 thereof shall be liable for any injuries or damages to persons or
16 property resulting solely from acts or omissions of Motorola, its
17 officers, directors, employees, agents, receivers, trustees,
18 successors, or assigns, or of any persons, including but not
19 limited to, firms, corporations, subsidiaries, contractors, or
20 consultants, in carrying out activities pursuant to this Consent
21 Order, nor shall the United States Government or any agency
22 thereof be held out as a party to any contract entered into by
23 Motorola or its consultants in carrying out activities pursuant
24 to this Consent Order.

25 25. EPA agrees that all work designated to be performed by
26 Motorola under this Consent Order is consistent with the National
27 Contingency Plan, 40 C.F.R. Part 300, promulgated by EPA pursuant
28 to Section 105 of the Comprehensive Environmental Response,

1 Compensation and Liability Act, ("CERCLA"), 42 U.S.C. §9605.
2 EPA further agrees that costs reasonably incurred by Motorola in
3 connection with the installation, sampling, analysis, and consulting
4 services for the sixteen wells formerly installed on the facility
5 are consistent with the National Contingency Plan. In the event
6 that EPA initiates an action pursuant to Section 106 or Section
7 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, against Motorola,
8 Motorola and EPA shall suggest to the Court that it consider the
9 monitoring work performed by Motorola in determining the amount,
10 if any, of Motorola's liability for response or remedial costs
11 in the Indian Bend Wash area.

12 26. Motorola shall not be deemed to have waived any claim
13 of confidentiality that it may have with respect to any document
14 delivered or preserved in connection with this Consent Order.

15 27. The effective date of the Stipulation and Agreement
16 shall be the date on which EPA notifies Motorola in writing
17 that it has been signed by EPA. Such notice shall be made by
18 hand or by certified mail in accordance with Paragraph 23. In
19 the case of certified mail, notice shall be considered effective
20 as of the date of mailing.

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PARTIES BOUND

This Consent Order shall apply to and be binding upon the following parties:

(a) The United States Environmental Protection Agency, and

(b) Motorola Inc., GEG, its officers, employees, agents, contractors, successors, assigns, and subsidiaries.

AGREED BY:

2/14/85

Date

United States Environmental
Protection Agency Region 9

By

Harry Seraydarian

Director

Toxics & Waste Management
Division

January 24, 1985

Date

Motorola Inc.
Government Electronics Group

By

James R. Lincicome

James R. Lincicome

Executive Vice-President
and General Manager